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IN THE

SUPREME COURT OF THE UNITED STATES.

(October Term, 1902)

No. 228.

Supreme Court U. S.
FILED
APR 16 1903
JAMES H. McKENNEY,
Clerk.

BERT ROSS,
Appellant,

AGAINST

MARTIN AGUIRRE,
Appellee.

BRIEF FOR APPELLEE.

U. S. WEBB,
Attorney-General of the State of California,
E. B. POWER, and
C. N. POST,
Attorneys for Appellee.

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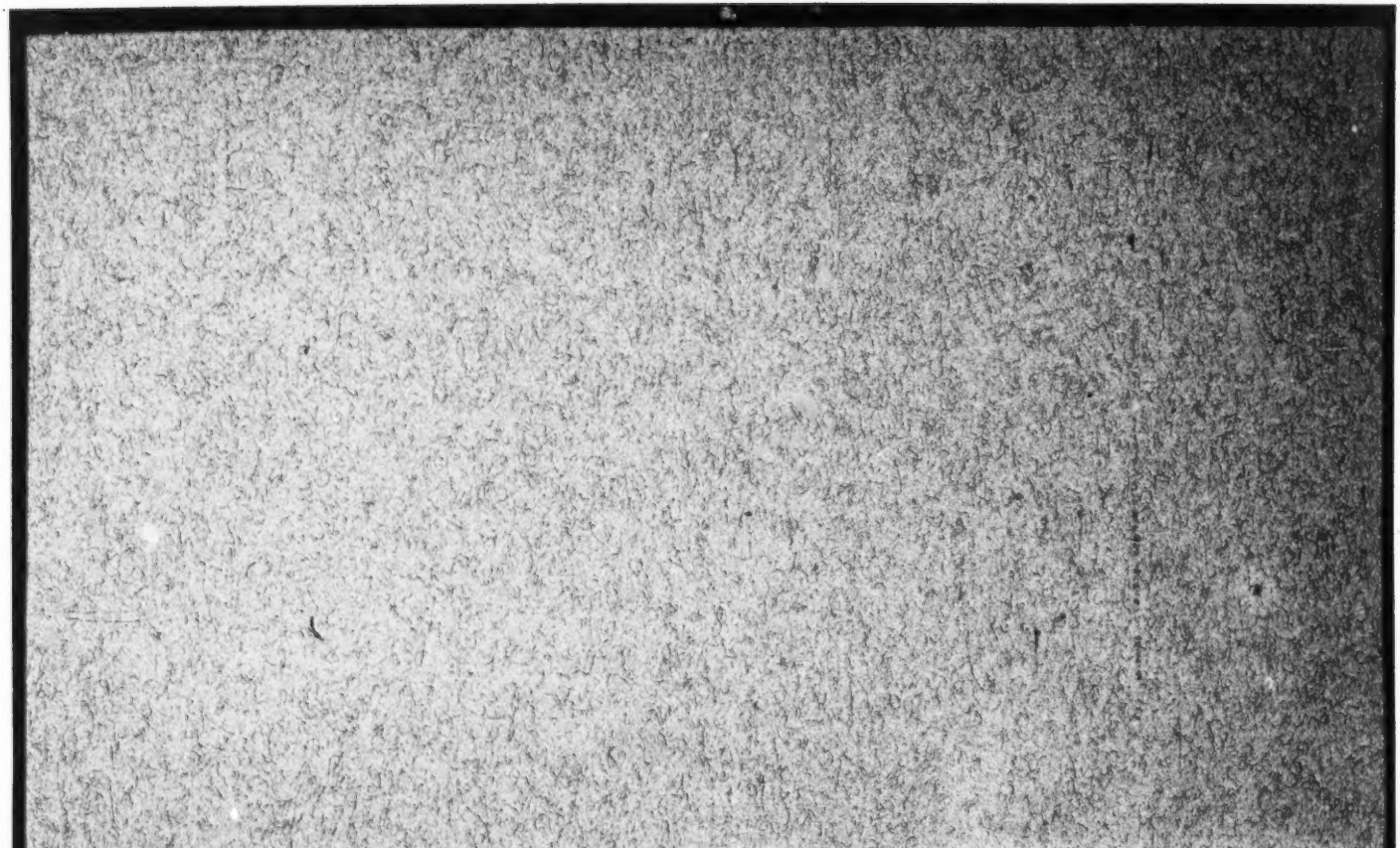


IN THE SUPREME COURT OF THE UNITED STATES.

(October Term, 1902.)

BERT ROSS,
Appellant,
against
MARTIN AGUIRRE, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA AT SAN QUENTIN, CALIFORNIA,
Appellee.

No. 228.

BRIEF FOR APPELLEE.

It will be seen at a glance that if the amendment of 1893 to Sections 204, 205, 206, and 208 of the Code of Civil Procedure was constitutional, this appeal must fail, as its entire structure is built upon the assumption that said amendment was unconstitutional, as violative of Section 24 of Article IV of the Constitution of the State of California. The title of the Act by which the amendment was effected is as follows: "An Act to amend sections two hundred and four, two hundred and five, two hundred and six, and two hundred and eight of the Code of Civil Procedure."

The case of *Lewis* vs. *Dunne*, 134 Cal. 291, which is the only authority cited by counsel for appellant in support of their contention as to the unconstitu-

tionality of the amendment, is a case in which the Legislature of the State of California attempted the wholesale *revision* of the Code of Civil Procedure of said State, and entitled the Act by which said amendment was attempted, as follows: "An Act to revise the Code of Civil Procedure of the State of California, by amending certain sections, repealing others, and adding certain new sections."

In passing on this title, the Supreme Court of said State said:

> "It (referring to the title) *does not even refer to a single section* which is to be amended or repealed; and as to the 'new sections' it does not give the slightest intimation as to what they are to contain, or what subject they are to deal with."

(The italicized words are ours.)

In that case the Supreme Court of California held the Act was unconstitutional, because (as one of two reasons) the title of the Act did not embrace but one subject expressed in its title, and the Chief Justice dissented from the majority opinion as to this ground of objection.

In *People* vs. *Parvin*, reported in 74 Cal. 549, the Supreme Court of the State of California held that the title of an Act amending Section 3481 of the Political Code in the following words: "An Act to amend Section 3481 of the Political Code," expressed the subject of the Act in its title sufficiently to meet the requirements of said Section 24 of Article IV of the Constitution of the State of California. In said case the Court said:

> "1. The Political Code constitutes a single statute, thus entitled: 'Title of the Act:

1. This Act shall be known as the Political Code of the State of California.' Whether, under the present Constitution, the Legislature would have power to enact a law so generally entitled, is a very serious question. But under the Constitution existing when the code was adopted, the title was sufficient, and the code continues in force. The section of the Constitution, after providing as above quoted, proceeds: 'No law shall be revised or amended by reference to its "title" (that is, by reference to its title alone); but in such case the Act revised or section amended shall be re-enacted, and published at length as revised or amended.' There is no question here but that Section 3481 was 're-enacted and published at length'; and the title of the Act amended is very clearly referred to as the 'Political Code.' With reference to a statute passed since the Constitution of 1879 took effect, there can be no doubt that a section of such a statute—the statute itself being properly entitled—may be amended by referring, in the title of the amendment, to the title of the statute amended, and re-enacting the section as amended. If, in such case, the title of the original statute did not state its 'subject,' both the statute and any amendment of it would be void. But it is enough if the title of the statute is recited; it is not necessary that the subject of the particular section amended shall be stated in the title of the amendatory Act. It is to be understood, of course, that if any subject shall be embraced in a section of an Act passed under the present Constitution, which shall not be expressed in the title of the Act, the section is void. (Art. 4, Sec. 4.) It follows, also, that, under pretense of amending a particular section, the Legislature can not legislate upon a subject not embraced in the title of the original Act. If it be said that the title of the amendatory Act of April 15, 1880, does not express the subject, the reply is that the Constitution does not require, in case of an amend-

ment, that the subject shall be any more fully stated than it is stated in the valid statute amended.

"Each article of the Political Code is preceded by headnotes numbered to correspond with the sections following, and purporting to give, in brief form, the subject of each such sections. It would sometimes give fuller notice to the members of the Legislature if the title to a bill for amending a section of the code embraced a statement of the matter contained in the appropriate headnote, or its equivalent. The headnote to Section 3481, however, is 'unreclaimed lands may be set off in a separate district,' and even this does not indicate that such district may be formed within another already existing. But the Constitution only requires that the title of the Act which it is proposed to amend shall be clearly mentioned or recited in the Act amending a particular section. This being done, the sufficiency of the title of the amendatory Act depends upon the sufficiency of the title of the original Act; and as the title of the Political Code was sufficient under the former Constitution, we are not prepared to say that the Political Code is a void Act because its title does not conform to the mandate of the Constitution, adopted after the code became an operative law."

The case of *People* vs. *Parvin* was quoted with approval in *People* vs. *Dobbins*, 73 Cal. 260, and *Francais* vs. *Somps*, 92 Cal. 505.

We can not agree with counsel for appellant in their conclusion that the case of *Lewis* vs. *Dunn* supra, limited the decision in the case of *People* vs. *Parvin* to be authority only where such title is confined to a single section of the code. It is true the Court stated in the decision in the former case that the decision in the latter case simply referred to a

case where a single section was amended, but the Court did not intimate in its decision that several sections might not be amended with a title such as we now have under consideration.

If counsel for appellant had quoted the clause which follows the quotation they have made use of in *Lewis* vs. *Dunne* (see page 20 of appellant's brief), it would have shown that the Court in that case intimated that one of the reasons the title was insufficient there was that the title did not refer to the sections of the code to be amended. The clause we refer to is as follows:

"It (*People* vs. *Parvin*) is not an authority for the sufficiency of such a title as is here involved, *which refers to no section whatever*, and it can not be considered as determinative of the question involved here, which was not before the Court in the facts in that case." (*Lewis* vs. *Dunne*, 134 Cal. 299.)

It is therefore clear that the Legislature of the State of California, under the authority of *People* vs. *Parvin*, which stands as the law of California to-day, could amend a single section of the codes of said State under such a title as we have under consideration. Then why could they not amend four sections of a code under a similar title, when the sections all refer to the same matter, as they do in this case, viz., the listing and selecting of jurors, and such sections are "re-enacted and published at length," as was done here?

If each section could be amended separately, under such a title, to hold that the four sections are not subject to such an amendment as a whole under one

title, would simply be to make a distinction without a difference.

The language quoted in the case of *People* vs. *Mullender*, 132 Cal., at page 220, is appropriate here, because the same constitutional provision is under consideration:

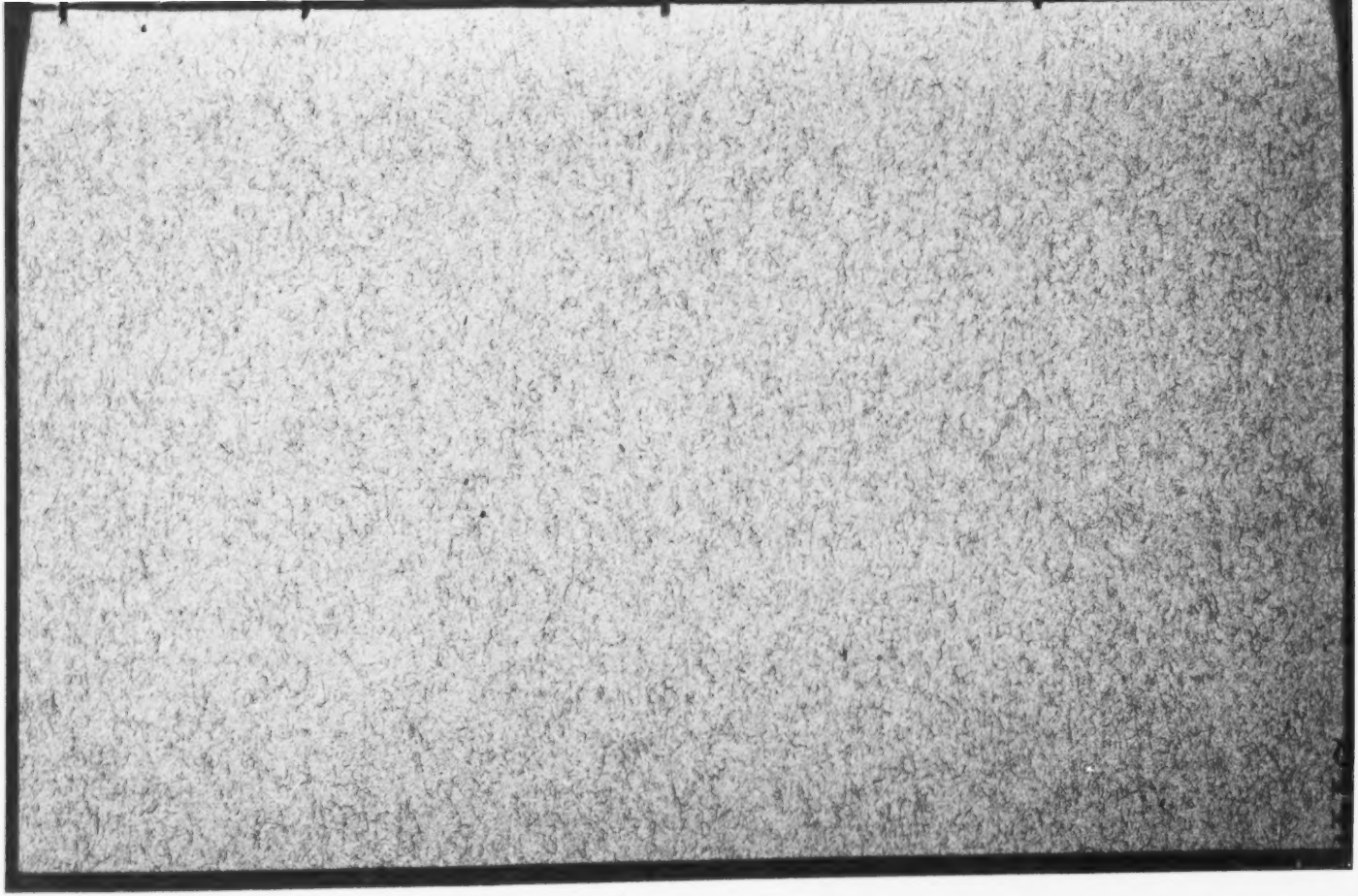
> "It is admitted that the constitutional provision under consideration has always been given a liberal construction; and this must be so, because the Constitution itself does not define the degree of particularity with which a title shall specify the subject of a bill. The matter must therefore be left largely to legislative discretion."

The case of *Marston* vs. *Humes*, and the cases there quoted, reported in 28 Pacific Reporter, page 520, passes on a question similar to the one under discussion here and is in point.

Appellee, therefore, respectfully submits that the amendments to the sections in question to be found in the Statutes of California 1893, at page 297 thereof, are constitutional, and as there is no question but what the grand jury was drawn in accordance with the provisions of said code sections as amended, the appeal in this case is without merit.

A. Ross.
Attorney General
E. B. Power and
L. N. Post.

Attorneys for Appellee.



RECEIPT of a copy of the within Brief is hereby admitted, this April 30th, 1903.

W. Van Fleet &
W. B. Treadwell

Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 19.

Office Supreme Court U. S.
FILED
OCT 17 1903
JAMES H. McKENNEY,
Clerk.

BERT ROSS, APPELLANT,

vs.

MARTIN AGUIRRE, WARDEN, &c.

OPINION IN BEACH v. VON DETTEN, SUBMITTED BY APPELLEE.

M. N. BEACH, Constable, etc., Plaintiff and Appellant,
v.
OTTO VON DETTEN, County Auditor of San Joaquin County, Defendant and Respondent.

Sac., No. 1173. In Bank. June 26, 1903.

Constitutional law—Title of act—Amendments.—Title of act of March 23, 1901, amending county government act of 1897, held sufficient. The title of an amendatory act which gives the title of the original act in full and the number of the section in its amended form is sufficient. Any number of sections in the amendatory act can be thus amended by publishing the sections in full as amended. The amendment of one section is not a revision in the constitutional sense, nor of 58 sections out of 234. When the title of the amendatory act refers to the original, and the general plan of the original act is not changed with the same numbers it is an amendment and not revision. Presumption is in favor of constitutionality, and to that end will receive liberal construction. Title need not express all details nor be an index. When the matter in the amendatory act might have been included in the original it is good.

Appeal from the superior court of San Joaquin county—W. B. Nutter, judge.

For appellant—Ashley & Neumiller.
For respondent—A. H. Carpenter, as *amicus curiæ*.

This is an appeal by plaintiff from a judgment denying his application for a writ of mandate against defendant as county auditor. Plaintiff is a constable of Stockton township, in said county. He demanded a warrant for his salary as constable, amounting to $85.50, under the county government act of 1897. Defendant contends that he is only entitled to a warrant for $64.11, being his salary under the county government act of 1901 as amended.

The question to be determined is as to the constitutionality of the act of 1901 in so far as it affects the question of plaintiff's salary. The act of 1897 was entitled "An act to establish a uniform system of county and township governments," approved April 1, 1897. Section 56 of the act of 1897 provided: "The officers of a township are two justices of the peace, two constables, and such subordinate officers as are provided by law. In townships containing cities in which city justices or recorders are elected, there shall be but one justice of the peace." The act of 1897 fixed San Joaquin county as a county of the seventh class, and under its provisions plaintiff's salary was $100 per month. By an act entitled "An act to amend an act entitled 'An act to establish a uniform system of county and township governments, approved April 1, 1897,' by amending certain sections thereof, repealing certain other sections, and adding certain sections thereto," approved March 23, 1901, the legislature placed San Joaquin county in the eighth class, and made plaintiff's salary $75 per month. Under the above title the language used in amending the section of the act of 1897, fixing the classification of counties, is as follows: "Section one hundred and fifty-seven of an act entitled 'An act to establish a uniform system of county and township governments, approved April 1, 1897,' is hereby amended to read as follows:" All the sections so amended by the act of 1901 begin with a similar reference to the section and title of the act of 1897. Plaintiff contends that the act of 1901 is void because it violates that part of section 24 of article IV of the constitution of the State, which provides: "Every act shall embrace but one subject, which shall be expressed in its title * * * No law shall be revised or amended by reference to its title; but in such case the act revised or section amended shall be re-enacted and published at length as revised or amended * * *" The question, therefore, is as to whether or not the subject of the act of 1901 is expressed in its title, and whether it was published at length as amended. It is also claimed that the act is a revision and not an amendment. "We think it clearly appears that the act was an amendatory act, and not a revision. It is styled in the title, 'An act to amend;' and not only this, but every section amended is referred to in the body of the act by number, and 'is hereby amended to read as follows.' The legislature in every section amended refers to the title of the act of 1897, quoting it in full, and giving the number of the section amended, and the language in its amended form. It is therefore clear that the legislature thought it was amending certain sections of the act of 1897. Nor does it make any difference that fifty-eight sections of the original act of two hundred and thirty-four sections were thus amended.

If one section could be amended in the way in which it was done in this case, fifty-eight could be so amended." There is no law that makes the amendment of one section of an act embracing 234 sections a "revision." If the amendment of one section is not a revision, neither is the amendment of two sections, nor of fifty-eight sections. Of course, every amendment of any section is in one sense a revision of that section, but it is not a revision in the sense of the constitution. The remaining one hundred and seventy-six sections of the act of 1897 were not changed in any way, nor was the general plan of the original act changed, nor the matter re-arranged. In "The Borrowdale," 39 Fed. Rep. 380, it is said: "As long as there is one section of the original act untouched there is no revision, and it is sufficient to set forth and publish in the amendatory act only the sections actually amended and as amended." The above statement is evidently too broad, because it is apparent that an act consisting of many sections might be changed in many respects, the subjects treated of differently, the sections differently arranged and differently numbered, and yet retain one or more complete sections of the original act. In such case the act would be a revision. But in this case, where the title refers plainly to the original act, and the general plan of the original act is not changed, but three-fourths of the original sections remain the same, with the same numbers, it is evident that the amendatory act was not intended to be nor was it a revision, within the meaning of the constitution. In determining the constitutionality of an act of the legislature, courts always presume in the first place that the act is constitutional. They also presume that the legislature acted with integrity, and with an honest purpose to keep within the restrictions and limitations laid down by the constitution. The legislature is a co-ordinate department of the government, invested with high and responsible duties, and it must be presumed that it has considered and discussed the constitutionality of all measures passed by it. There has been a general disposition in all courts to construe constitutional provisions, with reference to the subject and title of an act, liberally, rather than to embarrass legislation by a construction which is unnecessary to the accomplishment of the beneficial purposes for which the provision was adopted. It is evident that the title of an act is not required to express fully all the details with which the act may deal, nor is it required to be an index to every topic under the act. It is said by Judge Cooley in his work on Constitutional Limitations, sixth edition, page 172: "The general purpose of these provisions is accomplished when a law has but one general subject, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of this general object to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible." And this court has adopted the liberal rule as above stated. *People v. Parvin et al.* was first decided in August, 1887, and affirmed in bank on re-hearing in January, 1888, 74 Cal. 549. It was there held that an act entitled "An

act to amend section 3481 of the Political Code" expresses the subject of the act in its title sufficiently to meet the requirements of the constitution. The court said: "There can be no doubt that a section of such a statute—the statute itself being properly entitled—may be amended by referring, in the title of the amendment, to the title of the statute amended, and re-enacting the statute as amended." That case was followed and approved in *People v. Dobbins*, 73 Cal. 257, decided also in August, 1887, where it was held that: "An act to amend an act entitled 'An act to establish a penal code,' approved February 14, 1872, by amending section 634, relating to fish and game," sufficiently expressed the subject in its title, within the meaning of the constitution. The Parvin case was also followed and approved in *Francais v. Somps*, 92 Cal. 502, where it was held that an amendatory act simply amending an act entitled "An act for the better protection of the stockholders in corporations formed under the laws of the State of California for the purpose of carrying on the business of mining," sufficiently expressed the subject in its title. The act so amended consisted of four sections, and the amendatory act did not mention the section or sections amended. In speaking of the constitutional provision here invoked, this court said in *Ex parte Liddell*, 93 Cal. 638: "It is admitted that the constitutional provision under consideration has always been given a liberal construction, and this must be so because the Constitution itself does not define the degree of particularity with which a title shall specify the subject of a bill. The matter must therefore be left largely to legislative discretion." The language quoted was adopted and approved in the late case of *People v. Mullander*, 132 Cal. 220. The rule as above stated is the rule laid down in the text books. It is said in Sutherland on Statutory Construction, section 101: "The constitutional requirement under discussion as applied to acts of this character, when they contain matter which might appropriately have been incorporated in the original act under its title, is satisfied generally if the amendatory or supplemental act identifies the original act by its title and declares the purpose to amend or supplement it." For a list of authorities in other States supporting the text above stated, see note 2 to above section, pages 116–117.

The main case relied upon by appellant is *Lewis v. Dunne*, 134 Cal. 291. That case is not in conflict with the views herein expressed. The act there held unconstitutional was held to be an attempt at a revision of the Code of Civil Procedure. It was not an act to amend an act properly entitled. The court said in that case: "That the title should, on its face, give at least some sort of information as to what the proposed act was about. This the title in question does not do." *People v. Parvin, supra*, was discussed and distinguished, but not overruled. It is argued that the act of 1901 contained certain new provisions, not contained in the act of 1897, relating to reporters of the superior court and jurors in criminal cases. The provisions referred to are not before us in this case, and

if they were held unconstitutional, such holding would by no means invalidate the other provisions of the act.

The judgment appealed from should be affirmed.

COOPER, *C.*

We concur:

GRAY, *C.*
HAYNES, *C.*

For the reasons given in the foregoing opinion, the judgment appealed from is affirmed.

ANGELLOTTI, *J.*
SHAW, *J.*
LORIGAN, *J.*
VAN DYKE, *J.*

Concurring Opinion.

I concur in the judgment. The title of the act here involved refers to and copies the title of the act which it proposes to amend, and the said title of the act to be amended clearly expresses a definite subject; therefore the title of the amendatory act would have been good without any reference to sections of the act to be amended and the general reference which is made therein to sections is of no consequence. Upon the subject of "revision," the case is not at all within *Lewis v. Dunne*. In that case the title involved commenced with the words "An act to revise." It appeared on the face of the act that it was the result of an act to create a commission "for the revision and reforming of the law;" and the body of the act, with the varied forms of changes made therein, showed that it was, in fact, what it was formally declared to be, a revision.

McFARLAND, *J.*

U. S. WEBB,
Counsel for Appellee.